

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2271 OF 2024

Mohsin Ashraf Baloch

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Abhaykumar Apte, Advocate for Applicant.

Ms. Poonam Bhosale, APP for State-Respondent.

Mr. Sagar Tilekar, PI, Present.

CORAM:- ANIL S. KILOR, J.

DATED:- 22nd OCTOBER, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 759 of 2018 registered with Waliv Police Station, Palghar, for the offences punishable under Section 395, 365, 342, 201 and 120-B of the Indian Penal Code, 1860 and Sections 3(1)(ii), 3(2) and 3(4) of The Maharashtra Control of Organised Crime Act, 1999.

3) The applicant is in jail from last more than six years and till date four witnesses have been examined. There are total 81 witnesses. Thus, it is apparent that the pace with which the trial is proceedings, there is no end of trial in sight. There are antecedents against the applicant.

Despite the said fact, since there is unlikelihood that the trial will be concluded in near future, I am of the opinion that the application need to be considered on the ground of long period of incarceration.

4) The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*)¹, has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or any prosecuting agency including the court concerned

has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the

period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

5) Thus, considering the above-referred observations, I am of the view that the applicant is entitled for grant of bail. At this stage, the learned APP has expressed an apprehension that if the applicant is released on bail, he may commit the similar offence. Thereupon, the learned Counsel for the applicant, on instructions, makes a statement that the applicant is ready to abide any condition, if imposed while granting the bail including not to enter Palghar District.

6) In that view of the matter, I pass the following order.

ORDER

- (i) The Bail Application is allowed;
- (ii) It is directed that the Applicant shall be released on bail in Crime No. 759 of 2018 registered with Waliv Police Station, Palghar, for the offences punishable under Section 395, 365, 342, 201 and 120-B of the Indian Penal Code, 1860 and Sections 3(1) (ii), 3(2) and 3(4) of The Maharashtra Control of Organised Crime Act, 1999, on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;
- iii The applicant shall not enter into the territorial jurisdiction of Palghar District till the conclusion of the trial except on the date of trial;
- iv. The applicant shall provide his address, mobile number and name of the nearby police station to the I.O, which he shall attend the said Police Station on 1st and 16th day of every month between 1.00 pm to 3.00 pm till the conclusion of the trial except on the date of trial;
- v. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- vi. Liberty is granted to the State to apply cancellation of bail if the applicant commits similar offence.;

vii. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

viii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]